

## Internal Revenue Service

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PLR-137035-07

Date: January 31, 2008

### LEGEND

Company =

State =

a =

b =

c =

Dear :

We received a letter dated July 3, 2007, and subsequent correspondence submitted on behalf of Company requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election to be classified as an association taxable as a corporation for federal tax purposes, and requesting relief to file a late S corporation election under § 1362(b)(5) of the Internal Revenue Code. This letter responds to that request.

### FACTS

The information submitted discloses that Company is a limited liability company organized under State law on a. In b, Company sought advice from its accounting firm regarding its entity classification after becoming a single-member entity previously taxable as a partnership. Company and the accounting firm decided that Company

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should become an S corporation by making the appropriate entity classification and S corporation elections effective c. However, Company inadvertently failed to timely file either Form 8832, Entity Classification Election, to be an association taxable as a corporation or Form 2553, Election by a Small Business Corporation, to be an S corporation.

### LAW AND ANALYSIS

Section 1362(a)(1) provides that except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1362(b)(1) provides that an election under § 1362(a) may be made by a small business corporation for any taxable year – (A) at any time during the preceding taxable year, or (B) at any time during the taxable year and on or before the 15<sup>th</sup> day of the third month of the taxable year.

Section 1362(b)(3) provides that if (A) a small business corporation makes an election under § 1362(a) for any taxable year, and (B) such election is made after the 15<sup>th</sup> day of the third month of the taxable year and on or before the 15<sup>th</sup> day of the third month of the following taxable year, then such election shall be treated as made for the following taxable year.

Section 1362(b)(5) provides that if (A) an election under § 1362(a) is made for any taxable year (determined without regard to § 1362(b)(3)), after the date prescribed by § 1362(b) for making such election for such taxable year or no such election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make the election, the Secretary may treat such an election as timely made for the taxable year (and § 1362(b)(3) shall not apply).

Section 301.7701-3(a) provides, in part, that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) may elect its classification for federal tax purposes as provided in § 301.7701-3. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.

Section 301.7701-3(c)(1)(i) provides, in part, that, except as provided in § 301.7701-3(c)(1)(iv) and (v), an eligible entity may elect to be classified other than as provided under § 301.7701-3(b), or to change its classification, by filing Form 8832, Entity Classification Election, with the applicable service center.

Section 301.7701-3(c)(1)(iii) provides, in part, that an election made under

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§ 301.7701-3(c)(1)(i) will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified on the election form. The effective date specified on Form 8832 can not be more than 75 days prior to the date on which the election is filed and can not be more than 12 months after the date on which the election is filed.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I. Section 301.9100-1(b) provides that the term “regulatory election” includes an election whose due date is prescribed by a regulation published in the Federal Register.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

## CONCLUSIONS

Based on the facts and representations submitted, we conclude that Company has satisfied the requirements of §§ 301.9100-1 and 301.9100-3. Consequently, Company is granted an extension of time of 60 days from the date of this letter for electing under § 301.7701-3 to be treated as an association taxable as a corporation effective c. Company must file Form 8832 within the 60-day extension period with the appropriate service center with a copy of this letter attached.

We further conclude that Company has reasonable cause for failing to make an S corporation election. Thus, we conclude that Company is eligible for relief under § 1362(b)(5). Accordingly, provided Company makes the above entity classification election, if Company makes an election to be an S corporation by filing with the appropriate service center a completed Form 2553 effective c, within 60 days following the date of this letter, the election shall be treated as timely made.

Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Section 301.9100-1(a) provides that the granting of an extension of time for

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making an election is not a determination that the taxpayer is otherwise eligible to make the election.

This ruling is directed only to the taxpayer requesting it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being forwarded to taxpayer's authorized representative.

Sincerely,

/s/

WILLIAM P. O'SHEA  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures: 2 copies of this letter  
Copy for § 6110 purposes